

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1371

AN ACT to amend the Indiana Code concerning property and local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-20-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. A person may not use the privilege of:

- (1) filing notices under this article; or
- (2) **using the procedures under IC 32-28-13 concerning common law liens;**

to slander the title to land.

SECTION 2. IC 32-28-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. As used in this chapter, "common law lien" means a lien against real or personal property that is not:

- (1) a statutory lien;
- (2) a security interest created by agreement; or
- (3) **except as provided in this chapter**, a judicial lien obtained by legal or equitable process or proceedings.

SECTION 3. IC 32-28-13-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 1.5. As used in this chapter, "public employee" means an individual who is an employee in the executive, judicial, or legislative branch of:**

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(1) the state or a political subdivision (as defined in IC 5-11-10.5-1); or

(2) the federal government;

in Indiana.

SECTION 4. IC 32-28-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property. ~~against which a common law lien is held under this chapter.~~

SECTION 5. IC 32-28-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter, "public official" means an individual who holds office ~~in or is an employee of~~ **formerly held office at any time during the preceding four (4) years in** the executive, judicial, or legislative branch of:

(1) the state or federal government or a political subdivision (as defined in IC 5-11-10.5-1); of the state; or

(2) the federal government;

in Indiana.

SECTION 6. IC 32-28-13-4, AS AMENDED BY P.L.73-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien:

(1) as prescribed by the common law of Indiana; or

(2) as provided in this chapter.

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter.

SECTION 7. IC 32-28-13-5, AS AMENDED BY P.L.73-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A person who wishes to record a common law lien must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property. The statement must be



recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

(1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.

(2) The statement must be filed in duplicate.

(3) The statement must set forth **all of the following**:

(A) That if the property owner is a public official or public employee who has filed a written notice in accordance with section 6.5 of this chapter, the common law lien is void thirty (30) days after filing the written notice if the suit has not been commenced.

~~(A)~~ (B) The amount claimed to be owed by the property owner to the lienholder.

~~(B)~~ (C) The name and address of the lienholder.

~~(C)~~ (D) The name of the property owner.

~~(D)~~ (E) The last address of the property owner as shown on the property tax records of the county.

~~(E)~~ (F) The legal description and street and number, if any, of the real property against which the common law lien is filed.

~~(F)~~ (G) A full description of the personal property against which the common law lien is filed, including the location of the personal property. **and**

~~(G)~~ (H) The legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars (\$2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

SECTION 8. IC 32-28-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) A property owner **who is not a public official or public employee** may send to the



lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by ~~registered or certified~~ **first class** mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after ~~receiving~~ the **postmark date of the** notice to commence suit **received by the lienholder**, the common law lien is void. To release the common law lien from the **real or personal** property, the property owner must comply with the requirements of section 7 of this chapter.

(c) The lienholder shall notify the county recorder in writing of:

- (1) the lienholder's commencement of a suit; or**
- (2) the lienholder's intention not to commence suit.**

SECTION 9. IC 32-28-13-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 6.5. (a) If a property owner who is a public official or public employee receives a statement of intention to hold a common law lien under section 5 of this chapter, the property owner may provide written notice to the county recorder swearing and affirming that the property owner is a public official or public employee.**

(b) Not later than three (3) business days after receiving a property owner's written notice, the county recorder shall send to the lienholder the following:

- (1) A copy of the property owner's written notice.**
- (2) A statement that if the lienholder fails to commence suit on the common law lien within thirty (30) days after the postmark date of the county recorder's notice under this subsection, the common law lien is void.**

The county recorder shall send a copy of the county recorder's written notice to the property owner. The county recorder's notice to the lienholder must be made by first class mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter. The county recorder shall record the date the statement is mailed to the lienholder under this section.

(c) The lienholder shall notify the county recorder in writing of:

- (1) the lienholder's commencement of a suit; or**
- (2) the lienholder's intention not to commence suit.**

SECTION 10. IC 32-28-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner may file an affidavit of service of notice to commence suit with the recorder of the county in**



which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

(A) the date the notice to commence suit was ~~received by~~ **mailed to** the lienholder;

(B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was ~~received by~~ **mailed to** the lienholder;

(C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;

(D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and

(E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of ~~(A)~~ the notice to commence suit that was sent to the lienholder under section 6 of this chapter. ~~and (B) the return receipt of the notice to commence suit.~~

(b) The **real or personal** property against which the lien has been filed is released from the common law lien when the county recorder:

(1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and

(2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established in IC 36-2-7-10.

SECTION 11. IC 33-32-2-10, AS ADDED BY P.L.78-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section applies whenever the clerk is required to send by registered or certified mail a document filed with a court.

(b) The initial mailing of the document by registered or certified mail sent:

(1) to each party who is required to receive the mailing; and

(2) to only one (1) of the party's addresses;

shall be paid out of court costs and fees collected under IC 33-37.

(c) If a person requests the clerk to send ~~a~~ **any** mailing by registered or certified mail after the initial mailing described in subsection (b), the person shall ~~pay the cost of the mailing.~~ **provide the clerk with the following:**

(1) **An envelope with sufficient postage affixed, addressed to**



the recipient with the address of the clerk's office as the return address.

(2) The United States Postal Service forms for registered or certified mail. If return receipt is requested, the forms must be completed so that the clerk's office receives the return receipt.

(3) The United States Postal Service fee for the appropriate service by registered or certified mail and return receipt, if requested.

The clerk may not collect any additional fee for sending a mailing.

(d) In a county where court postage costs are paid by the clerk's office, the amount collected by the clerk for additional mailings by registered or certified mail shall be deposited into the clerk's record perpetuation fund established under IC 33-37-5-2. In a county where court postage costs are paid out of the county general fund, the amount collected by the clerk for additional mailings by registered or certified mail shall be returned to the county general fund.

SECTION 12. IC 33-37-5-2, AS AMENDED BY P.L.128-2012, SECTION 180, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Each clerk shall establish a clerk's record perpetuation fund. The clerk shall deposit all the following in the fund:

- (1) Revenue received by the clerk for transmitting documents by facsimile machine to a person under IC 5-14-3.
- (2) Document storage fees required under section 20 of this chapter.
- (3) The late payment fees imposed under section 22 of this chapter that are authorized for deposit in the clerk's record perpetuation fund under IC 33-37-7-2.
- (4) The fees required under IC 29-1-7-3.1 for deposit of a will.
- (5) Automated record keeping fees deposited in the fund under IC 33-37-7-2(m).

(6) Fees for preparing a transcript or copy of any record under section 1 of this chapter.

(b) The clerk may use any money in the fund for the following purposes:

- (1) The preservation of records.
- (2) The improvement of record keeping systems and equipment.
- (3) Case management system.

SECTION 13. IC 36-1-8.5-2, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "covered person"



means:

- (1) a judge;
- (2) a law enforcement officer; ~~or~~
- (3) a victim of domestic violence; **or**

~~who submits a written request to have the person's home address restricted from disclosure under this chapter.~~

(4) a public official.

SECTION 14. IC 36-1-8.5-3, AS AMENDED BY P.L.14-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter, "judge" means an individual who ~~is employed or was~~ **holds or** formerly ~~employed held~~ **office** as:

- (1) a judge of the supreme court, court of appeals, tax court, circuit court, superior court, municipal court, county court, federal court, or small claims court; **or**
- (2) **a magistrate, commissioner, or juvenile referee of a court.**

SECTION 15. IC 36-1-8.5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. As used in this chapter, "public official" means an individual who holds or formerly held office at any time during the preceding four (4) years in the executive or legislative branch of the state or federal government or a political subdivision of the state or federal government.**

SECTION 16. IC 36-1-8.5-7, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) **A covered person who wants to restrict access to the covered person's home address by means of a public property data base web site must submit a written request to the unit that operates the public property data base web site.**

(b) A unit that operates a public property data base web site, directly or through a third party, ~~may~~ **shall** establish a process to prevent a member of the general public from gaining access to the home address of a covered person by means of the public property data base web site.

~~(b)~~ (c) **In establishing** a process ~~established by a unit under subsection (a); must meet the requirements of this chapter. under subsection (b), a unit shall do all of the following:~~

- (1) **Determine the forms of the written request to restrict and allow public access.**
- (2) **Specify any information or verification required by the unit to process the written request.**
- (3) **Determine which person or department of the unit will receive and process the request.**



(4) Provide a method under which a covered person is notified of the procedure to be used to restrict or allow disclosure of the home address of the covered person under this chapter.

(d) A unit may charge a covered person a reasonable fee to make a written request under this section.

SECTION 17. IC 36-1-8.5-8 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 8: A covered person who wants to restrict access to the covered person's home address by means of the public property data base web site must submit a written request to the unit. As part of the process developed by the unit under section 7 of this chapter, the unit may:

- (1) determine the form of the written request;
- (2) specify any information or verification required by the unit to process the request; and
- (3) charge a covered person a reasonable fee to make a written request under this section.

SECTION 18. IC 36-1-8.5-9, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) This section applies to a covered person who has submitted a written request under section 8 **7(a)** of this chapter.

(b) A unit shall restrict access to the home address of a covered person until the covered person submits a written request to the unit to allow public access to the person's home address on the public property data base web site. As part of the process developed by the unit under section 7 of this chapter, the unit may:

- (1) determine the form of the written request;
- (2) specify any information or verification required by the unit to process the request; and
- (3) charge a covered person a reasonable fee to make a written request under this section.

SECTION 19. IC 36-1-8.5-10, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section applies to a covered person who:

- (1) after submitting a written request under section 8 **7(a)** of this chapter, obtains a change of name under IC 34-28-2; and
- (2) notifies the unit in writing of the name change.

(b) The unit shall prevent a search by the general public of the public property data base web site from disclosing or otherwise associating the covered person's home address with the covered person's former name and new name. The unit may charge a reasonable



fee to process a name change under this section.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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